

(e) If the Board concludes that the contractor has violated the Executive Order, the final order shall order action to abate the violation, which may include hiring the affected employee(s) in the same or a substantially equivalent position(s) to that which the employee(s) held under the predecessor contract, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where the Administrator has sought imposition of ineligibility sanctions, the Board shall also determine whether an order imposing ineligibility sanctions is appropriate.

(f) If a final order finding violations of the Executive Order is issued, the Board may assess against the successor contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the employee(s) in the proceeding.

(g) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary and shall act fully and finally on behalf of the Secretary concerning such matters. The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of all relevant matter contained in the entire record before it. The Board shall not hear cases de novo or receive new evidence into the record.

(h) Proceedings under Executive Order 12933 are not subject to the Equal Access to Justice Act (Pub. L. 96-481). Accordingly, in any proceeding conducted pursuant to the provisions of §§ 9.105-9.107, the Administrative Review Board shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act.

#### ENFORCEMENT REMEDIES

#### **§ 9.108 What are the consequences to a contractor of not complying with the Executive Order?**

(a) The Executive Order provides that the Secretary shall have the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring employment of the prede-

cessor contractor's employees and payment of wages lost.

(b) After an investigation and a determination by the Administrator that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld in a deposit fund as are necessary to pay the moneys due. Upon the final order of the Secretary that such moneys are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement.

(c) If the contracting officer or the Secretary finds that the predecessor contractor has failed to provide a list of the names of employees working under the contract in accordance with § 9.6(c), the contracting officer may take such action as may be necessary to cause the suspension of the payment of funds until such time as the list is provided to the contracting officer.

#### **§ 9.109 Under what circumstances will ineligibility sanctions be imposed?**

(a) Where the Secretary finds that a contractor has failed to comply with any order of the Secretary or has committed willful violations of the Executive Order or these regulations, the Secretary may order that the contractor and its responsible officers, and any firm in which the contractor has a substantial interest, shall be ineligible to be awarded any contract or subcontract of the United States for a period of three years.

(b) Upon order of the Secretary, the names of persons or firms found to be ineligible for contracts in accordance with this section shall be added to the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," compiled, maintained and distributed by the General Services Administration in accordance with 48 CFR 9.404. No contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date